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***Via Certified Mail –
Return Receipt Requested***

April 3, 2019

APR 09 2019

Napa County Public Administrator
650 Imperial Way, Suite 101
Napa, CA 94559

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution
Control Act (Clean Water Act)**

Dear Public Administrator

STATUTORY NOTICE

This Notice is provided on behalf of our client California River Watch (“River Watch”) with regard to violations of the Clean Water Act (“CWA” or “Act”; 33 U.S.C. § 1251 *et seq.*) that River Watch alleges are occurring through the ownership and/or operation of the sewage collection and treatment system located at and adjacent to the former Moore’s Resort located at 6 Cuttings Wharf Road in Napa California.

River Watch hereby places you, as Administrator of the Estate of Rose Mary Moore¹, which is the owner and/or operator of this sewage collection and treatment system on notice, that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the Estate of Rose Mary Moore for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, San Francisco Bay Region, Water Quality Control Plan (“Basin Plan”), as the result of alleged unlawful discharges of sewage from the sewer pipelines and ponds to the Napa River, a water of the United States.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System (“NPDES”) permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a), prohibition, such that violation of a permit limit places a discharger in violation of the CWA.

River Watch alleges that the Estate of Rose Mary Moore is violating the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a)

¹ Pursuant to Letters of Administration issued Feb. 20, 2019, Napa County Superior Court Case No. 19PR000020.

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and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A), as it is not in possession of an NPDES Permit covering discharges from the ponds and sewage lines which are point sources under the CWA, to a water of the United States.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating operation of the sewage collection and treatment system in the region at issue in this Notice is the Regional Water Quality Control Board, San Francisco Bay Region (“RWQCB”).

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute. CWA § 505, 33 U.S.C. § 1365. River Watch is exercising such citizen enforcement to enforce your compliance with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The specified standard, limitation, or order alleged to have been violated.

River Watch identifies discharges of sewage from the sewage collection and treatment system located at or adjacent to 6 Cuttings Wharf Road in Napa, California to waters of the United States in violation of CWA § 301(a), 33 U.S.C. § 1311(a) which states in pertinent part: “Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful.”

2. The Activity Alleged to Constitute a Violation.

A. Surface Discharges Caused By Defects In Sewer Lines

The sewage collection and treatment system at issue in this Notice consists of 2 evaporation ponds with a total surface area of approximately 0.5 acres. Domestic sewage from multiple single-

family residences is collected and treated in 2 tri-chambered, underground Imhoff tanks prior to being pumped to the evaporation ponds for stabilization and evaporation. River Watch has been informed, and based on said information and belief alleges, that sanitary sewer overflows are occurring in which untreated sewage is being discharged above ground from the collection system prior to reaching the Imhoff tanks. Sewer line cracks, displaced joints, eroded segments, and other structural defects in the sewer lines have resulted in the unlawful discharge of untreated sewage, some of which has flowed over land to the Napa River.

B. Surface Discharges of Partially Treated Sewage Caused By Overflows From Percolation Ponds

The evaporation ponds are located approximately 1,500 feet east of Cuttings Wharf Road, immediately adjacent to a tidal drainage ditch which empties into the Napa River. Numerous reports describe overflows (especially during the rainy season) from the ponds into the adjacent drainage ditch and from there into the Napa River. The wastewater contained in the percolation ponds has received only partial treatment in the Imhoff tanks, which is not in compliance with current regulatory standards.

Under Discharge Specification B. 6 of the Waste Discharge Requirements set forth in RWQCB Order No. R2-1986-028, "To prevent the threat of overflow, a minimum freeboard of two feet shall be maintained in the ponds at all times." River Watch alleges there has been a failure to comply with this provision of the RWQCB Order on multiple occasions, especially during storm events.

All of the above-described discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), in that they are discharges of a pollutant (sewage) from a point source (sewage collection system and evaporation ponds) to a water of the United States (Napa River) without complying with any other sections of the Act. River Watch further contends these violations are continuing in nature or have a likelihood of occurring in the future. These violations are of special concern in that the Napa River is listed under CWA § 303(d) as impaired for nutrients and pathogens. Domestic sewage is a major source of these pollutants.

C. Impacts to Beneficial Uses

The RWQCB's Basin Plan identifies multiple beneficial uses for the Napa River downstream from the vicinity of the Cuttings Wharf Road property including navigation, water contact recreation, non-contact water recreation, cold fresh water habitat, wildlife habitat, preservation of rare and endangered species, and fish migration and spawning. The above-described illegal discharges reaching the Napa River cause prohibited pollution by unreasonably affecting these beneficial uses. River Watch is understandably concerned regarding the effects of these unpermitted discharges of untreated and partially treated sewage on critical habitat in and around the sensitive ecosystem of the Napa River.

3. The Person or Persons Responsible for the Alleged Violation.

The entity responsible for the alleged violations identified in this Notice is Estate of Rose Mary Moore.

4. The Location of the Alleged Violation.

The location or locations of the various violations alleged in this Notice is the land at and adjacent to the former Moore's Resort located at 6 Cuttings Wharf Road in Napa, California, including the waters of the Napa River – a water of the United States.

The former Moore's Resort, located at 6 Cuttings Wharf Road in Napa is located on the west bank of a tidal section of the Napa River. Moore's Landing has been closed for some time. The sewage collection and treatment system identified in this Notice continues to operate to serve the private dwellings and homes located along Cuttings Wharf Road, as documented by the License and Easement Agreement whereby Charles N. Moore and Rose Mary Moore, past owners of Napa County Assessor's Parcels Nos. 047-052-009, 047-262-002 and 047-262-003, entered into a license agreement with the owners of the other parcels listed in the License and Easement Agreement granting them an easement for the purpose of a sewage line conveying sewage or sewage effluent from said parcels over and across Parcel No. 047-052-009.

5. The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is April 1, 2014 to April 1, 2019. River Watch may from time to time update this Notice to include all violations of the CWA which occur during and after the range of dates currently covered. Some violations are continuous, and therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol with a mailing address of 290 South Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

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River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

Jack Silver Esq. - Tel. (707) 528-8175
Law Office of Jack Silver
Jerry Bernhaut, Esq. - Tel. (707) 595-1852
708 Gravenstein Hwy. No. # 407
Sebastopol, CA 95472
Jsilverenvironmental@gmail.com
J3bernhaut@gmail.com.

RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to the opportunity to tailor remedial measures to the specific operation of the sewage collection and treatment system. River Watch's sewage system expert and RWQCB staff have suggested a potential solution to bring the sewage collection and treatment system into compliance with the CWA would be the building of an on-site treatment plant in the vicinity of the parcels served by the current sewage system on Cuttings Wharf Road. The treated effluent can then be shipped out (and uphill) to a location where a pond can safely exist without the likelihood of discharging to the Napa River. This water can also be used for irrigation.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community and use the affected watershed for recreation, fishing, horseback riding, hiking, photography, and nature walks. The health, use and enjoyment of this natural resource is specifically impaired by the alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$54,833.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of the CWA to obtain the relief provided for under the law

The CWA specifically provides a 60-day "notice period" to promote resolution of disputes. River Watch encourages the Napa County Public Administrator to contact counsel for River Watch

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within 20 days after receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jerry Bernhaut".

Jerry Bernhaut, Esq.
Attorney for California River Watch

JB

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Service List

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

✓ Michael Stoker, Regional Administrator
U.S. Environmental Protection Agency
Pacific Northwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100